ATLANTIC RICHFIELD CO.

IBLA 86-1272 Decided October 17, 1988

Appeal from a decision of the Oregon State Office, Bureau of Land Management, canceling in part oil and gas lease OR 24946 WA.

Affirmed.

1. Oil and Gas Leases: Cancellation--Oil and Gas Leases: Lands Subject to

   Where a Federal oil and gas lease has issued covering land which has been patented with no mineral reserva-tion to the United States in the patent, the oil and gas lease is properly canceled as to such land.

2. Mineral Leasing Act: Lands Subject to--Mineral Leasing Act for Acquired Lands: Lands Subject to--Oil and Gas Leases: Generally--Oil and Gas Leases: Cancellation--Oil and Gas Leases: Lands Subject to

   Under the over-the-counter noncompetitive leasing system, no offer to lease public domain lands could include acquired lands. Where it was subsequently shown that acquired lands were leased pursuant to a lease offer for public domain lands, the lease is properly canceled as to the acquired lands.

APPEARANCES: Gloria Storch, Senior Landman, for Atlantic Richfield Company.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Atlantic Richfield Company has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated May 6, 1986, canceling in part lease OR 24946 WA and an assignment thereof.

On October 9, 1980, Tyrex Oil Company (Tyrex) submitted an over-the-counter noncompetitive lease offer pursuant to section 17 of the Mineral Leasing Act of 1920, 30 U.S.C. | 226 (1982), describing various parcels of land within secs. 4, 8, 18, and 19 of T. 3 N., R. 21 E., Willamette Meridian, in Klickitat County, Washington, totalling 760.34 acres. On April 16, 1982, BLM issued lease OR 24949 WA to Tyrex for all the lands described in the lease offer. Tyrex subsequently assigned the lease to appellant, and the assignment was approved by BLM on March 6, 1984.

In its May 6, 1986, decision, BLM made the following determinations:

> Your oil and gas lease * * * is hereby cancelled and rejected as to the following lands:
>
> Willamette Meridian, Klickitat County, Washington
> T. 3 N., R. 21 E.,
> Sec. 19: Lot 1, N\NE^, NE^NW^,
> (160.24 acres)
>
> These lands are rejected because title was conveyed from the United States by patent no. 4977, granted March 29, 1896 with-out a reservation of the oil and gas. This error was found in our records and corrected. Furthermore, our records show that approximately 37.14 acres in the N\NE^ were acquired by the Corps of Engineers (tract 509 on July 11, 1961 and Tract 521 on June 3, 1963). These lands have been and are presently only available for lease as acquired lands under the Act of August 7, 1947 (61 Stat. 913; 30 U.S.C. 351-359). [Emphasis in original.]

On appeal, appellant raises no specific objections to the BLM finding that the acreage in question had previously been patented. It does, how- ever, raise certain contentions that it should be entitled to retain in the lease the 37.14 acres that were reacquired by the United States and placed under the jurisdiction of the U.S. Army Corps of Engineers. Specifically, it contends that because title records at the time of filing of the lease offer indicated the lands were subject to the Mineral Leasing Act of 1920, the offer had been formally approved by BLM, and the annual rentals had been timely and properly paid since lease issuance, appellant should be entitled to retain its interest in the acquired lands or qualify to lease the lands under the Acquired Lands Leasing Act.

[1] It is well established that the Department has authority to cancel a lease where the lands described in the lease were not subject to leasing by the United States at the time of lease issuance. Where a federal oil and gas lease has issued covering land which has been patented with no min- eral reservation to the United States in the patent, the oil and gas lease is properly canceled as to such land. O. D. Presley, 21 IBLA 190 (1975). On appeal, appellant has shown no error in BLM's determination that the 160.24 acres in sec. 19 had been patented with no reservation of mineral rights. Accordingly, we find that BLM correctly canceled the lease as to the lands that were patented.

[2] Further, BLM was correct to cancel the lease as to the 37.14 acres reacquired by the United States and under the administration of the Corps of Engineers. 43 CFR 3111.1-1(c) provides that "[n]o [over-the-counter noncompetitive] offer may include both public domain and acquired lands." 1/

1/ The noncompetitive oil and gas leasing system was abolished by Congress in the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203 (101 Stat. 1330-256). Under the new law, all land offered for leasing must first be offered competitively.

As explained in the preamble to the final rulemaking:

> The distribution of mineral revenues for each of these types of lands is mandated by law. In most instances, the distribution of revenues collected from public domain lands is different from that for acquired lands. Thus, providing for both public domain and acquired lands on the same lease would create administrative problems and increase the possibility for errors in revenue distribution.

48 FR 33656 (July 22, 1983). It is also important to note that public domain and acquired lands are leased under completely different statutory and regulatory schemes. The United States Attorney General has held that the Mineral Leasing Act of 1920 was not applicable to acquired lands because the Act had peculiar application to the public domain. 40 Op. Att'y Gen. 9 (1941). See generally Law of Federal Oil and Gas Leases, | 3.02[2] (1986 ed.); cf. Sam O. McReynolds, 85 IBLA 36 (1985). Accordingly, the authority to lease under one statute does not grant authority to lease lands not contemplated under that statute. Since there was no authority to lease the acquired lands at issue herein pursuant to Tyrex's offer to lease lands under the Mineral Leasing Act of 1920, BLM correctly canceled the lease as to these lands.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge